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Karla L. Escobar H.

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No. 2022-24
https://ssrn.com/abstract=4301104

ISSN 2699-0903 · FRANKFURT AM MAIN

www.lhlt.mpg.de

Indigenous Law and Social Mobilization: A History of the Concept of *Derecho Mayor* in Cauca (Colombia)

Karla L. Escobar H.[1]

On the morning of September 16th, 2020, the indigenous Misaks in the city of Popayán (Colombia) knocked down the statue of Sebastián de Belalcazar, known in Colombian national history as the Conquistador and Founder of the City of Popayán. A year later, on April 25th, 2021, another statue of Belalcazar, this time in Cali, was pulled down, too. This event was followed by other statue demolitions led by the Misak and other social groups. The images circulated profusely through online networks and motivated many different reflections: from history, memory, heritage, and, to a lesser extent, law. The latter is of great importance, due to the legal nature of the event: the toppling of the statue of Belalcazar was not the spontaneous product of collective rage, but the sentence assessed in a "historical trial" carried out by the Misak people. The sentence of this trial became the indigenous legal precedent that would be used later, on July 5th, 2021, to tear down the statue of Gonzalo Jiménez de Quesada in the capital of Colombia, Bogota. Misak leaders argued that the felling of these statutes across the country was part of recovering indigenous historical memory and the only way to imagine a better future.

"Recovering the land and the memory to recover everything," as the leaders said, recalled the mottos of the so called Movimiento de Autoridades Indígenas del Sur Occidente – AISO (Movement of Indigenous Authorities of the Colombian South West), a social movement of mostly Misak people in the 1980s. As in the past, the Misaks used this adage to invoke the so-called Derecho Mayor [Major/Ancient/Greater Law][2] as a principle of justice to denounce and transform a present-day problem through a critical reading of the national historical past.

In this article, I analyze the creation of the concept of Derecho Mayor and its role in *indígena* identity during the process of creating and solidifying the indigenous movement in Cauca, Colombia. I analyze the organizational process in the 1980s to understand the context of the concept's initial enunciation from two different perspectives. The first perspective concentrates on historical study of the legal category *indígena* in Colombian legislation and its implications for the birth of the indigenous movement in the Cauca region. The second focuses on how the concept of Derecho Mayor draws on different legal traditions, constantly

[1] Thank you to Paula-Camila Cáceres for assistance translating an earlier draft of this essay.

[2] In Spanish, the word *mayor* has different connotations depending on its contextual use. In the context of *Derecho Mayor* it involved three meanings: value (greater), preeminence (superior), and time (older).

transforming across the 20th century. The combination of these two perspectives brings light to how the Derecho Mayor translates a call for justice from the quotidian to the legal arena, defining different ways of political organization and plural forms of identification.

This double analysis pays attention to the role that different state and non-state actors had in defining organizational strategies in everyday life. Focusing on multiple voices that intervene in this process blurs the frontiers between the local and the global, the private and the public, and between the law on the books and the law in practice when thinking about self-identification inside social movements. This double reading then combines a diachronic and synchronic understanding of indigeneity not only in its dimension as a legal category but also as an everyday practice that transforms itself across time and space. Reflection on time and scale, central to the historiographical reexaminations of recent decades,[3] also problematizes essentialist readings of indigenous movements in Latin America and reexamines more emphatically the role that law plays in forms of identification, organization, and mobilization, as well as the interdependencies between individual and collective action. Although the article focuses on the Misak case (formerly known as Guambianos), the reading I propose here provides necessary detail about the plasticity of the indigenous category throughout Latin America, its different histories, and the variety of networks of interlocutors that have helped to shape these histories (Jackson, 2019).

The Manifiesto Guambiano and the Doctrine of *Derecho Mayor* in the 1980s

On June 28 and 29, 1980, several indígena groups in Colombia met together in the Guambía resguardo[4] (reservation) located in the municipality of Silvia in the Department of Cauca with trade union organizations, academics, workers, and peasants. Gathered there, they discussed the problems of their communities, their political aims, and the possibility of working with other sectors struggling for land in Colombia. The resulting document is known as *Ibe Namuiguen and Ñimmereay Gucha*, or as the *Manifiesto Guambiano* in Spanish

[3] For such reflections in the field of history see de Vries, 2019; Aslanian et al., 2013; in law and society see Eslava, 2018; Sassen, 2008; Valverde, 2009.

[4] The *Resguardo* is a form of collective property established by the Spanish crown that looked to liberate lands for colonizers by establishing borders in Indian domains. These portions of land could be acquired by donation, purchase or allocation. From the eighteenth century, it began to be conceived by some as a portion of land that indígena people could use, but not claim as their own. However, as Mayorga (2017) proposes, such an interpretation was not aligned with colonial legislation and would be the subject of constant legal disputes that continued even after Independence. The character and status of resguardo lands continued to be in dispute, and the debates about the legitimacy of this type of collective property were closely linked to the construction of the category indígena across the nineteenth and twentieth centuries.

(Guambiano Manifesto). Although the document was designed to represent the Misak's visions of law and emancipation, it also made clear that their target was a broader audience by saying: "this [manifesto] not only belongs to us: it is yours as well" (Manifesto Guambiano, 1980, p. 1; Figure 1). Such a call for unity and support from different sectors was based on the indígena movement's disillusionment with existing state laws that had shown limitations in protecting their communal lands, and with the inability of traditional legal activism to enable social change.

To achieve this bigger aim, the leaders invoked what they called the Derecho Mayor. This Derecho [law] was conceived not only as different from the current Colombian state law but as superior to it, since it assured the property of indígena collective lands based on the fact that the indígenas were "the first inhabitants of America" (p. 8). In contrast, state law was classified as "Derecho Menor [Lesser/Minor/Younger Law]," asserting that this should be the real hierarchy in the Colombian legal order. They also claimed that Colombian society's failure to know and recognize this "truth" was the main reason for the exploitation and humiliation that indígena people had suffered across the centuries. Thus, public recognition of an indígena law that was superior to state law was proclaimed as the only path to emancipation.

The meeting held in the 1980s responded directly to an event of major relevance: the creation of a bill presented by the Oficina de Asuntos Indígenas (Bureau of Indigenous Affairs) of the government of Julio Cesar Turbay, which sought to assimilate the traditional Cabildos Indígenas (Indígena Councils) into a different form called Juntas de Acción Comunal (Com-

munal Action Meetings). For some, this policy was seen as having the potential to empower communal initiatives in rural areas, but for others, it was a disguised way to depoliticize popular organizational processes by co-opting them into state regulations and bureaucracies.

Colombian Law and the Concept of "Indígena" in a Historical Frame

The legal category of indígena has existed in Colombian law since the beginning of the Republic[5] and was developed in parallel with the category of modern citizenship, yet its meaning has changed across time and space. Because the regulations for resguardo lands stemmed from the colonial period, the new republican state tried to eradicate this type of communal property; however, the resguardos were never fully abolished in Cauca. Colombian political elites' dependence on indigenous battalions during nineteenth-century civil wars allowed indígena leaders of the region to influence the creation of laws that protected their collective territories. Law 89 of 1890 was particularly important for accomplishing this aim, yet it had limited power. Law 89 provided a transitional legal framework that protected indígena lands from usurpers, but with the long-term aim of eradicating collective property in land by dividing the resguardos into individual plots. Interpretations of Law 89 were widely disparate. These differences can be traced by analyzing indígenas' legal claims and their outcomes. In some trials, courts interpreted the law to permit the protection of resguardos, or even the recreation of disappeared resguardos (a strategy particularly important for indígenas terrajeros[6]). In other cases, Law 89 provided the legal framework to maintain the local indígena authority structure, and in other cases, the same law accomplished the aim for which it was created: dissolution of indígenas' collective lands. The different interpretations of Law 89 were in many cases related to the different meanings of the word indígena in different contexts (Escobar, 2020).

The different attempts at organizing indígena-based mobilizations were usually attached to a particular interpretation of Law 89. That was the case of the movement led by the indígena leader Manuel Quintín Lame at the beginning of twentieth century and other leaders in the following decades. This did not change in the late 1960s when the contemporary indígena organization took form in the Cauca region. In 1971, when indígenas with union and campesino leaders together founded the Consejo Regional Indígena del Cauca – CRIC (Regional Indigenous Council of Cauca), one of the mottos of the movement was "To make

[5] The proclamations of Independence in the territories that now constitute Colombia started in 1810; however, the Republic of Colombia was born in 1819. The first attempt to define the category indígena in Colombian law dates to 1821. The 1821 law specifies that the people formerly known as "indios" would be known from then as "indígenas." This category was attached to the condition of living in a resguardo land.

[6] Terrajeros are people who paid a *terraje* or rent that indígenas had to pay to a landlord, usually in the form of days of work, to use a piece of land. Many haciendas in the Cauca region obtained their workforce from this practice.

known the laws concerning indígena people and demand their just application." The goal of this legal pedagogy was not only to protect the remaining resguardo lands that had managed to survive to that moment, but mainly to support a process of recovering lands for those communities that had lost them.

The history of CRIC coincided with a diversity of political strategies developed by indígena people of the region to protect and recover their land. The CRIC, for example, was closely linked with the agrarian movement and some unions, and its founding members were mostly indígenas terrajeros. That means that they were part of the indígena population who – legally speaking – were not living as indígenas anymore, since they had lost their communal lands. They nonetheless recognized themselves and were recognized by others as indígenas/indios in daily life. The possibilities of action for this population were very different compared to those communities still in possession of their resguardo titles and who were able to elect their cabildo every year. This latter population was able to maintain their lands because of their political agreements with *blanco-mestizo* elites, albeit in a very unequal relationship. This made the articulation of this population with the movement one of the new organization's biggest challenges. The aim of the CRIC during the 1970s was then to establish a link between the possibility of recovering lost land and to ask for the revitalization of local indígena authorities. This unification looked to improve the situation of both groups: for the terrajeros to recover their land and for resguardo inhabitants to have more autonomy from *blanco-mestizo* political elites.

Yet, this relationship with Law 89 of 1890 started to change in the 1980s, and the Manifesto shows this rupture. The assembly that created the Manifesto displays an important change in the forms of association, identification, and political practices used within the *indígena* movement. Although the assembly claimed to convene those categorized by the general term indígenas, they instead called themselves *Guambianos*, putting ethnic identity at the center of the mobilization and establishing a distinction between the CRIC's forms of organization and those of other indígena and campesino leaders from the region. This manifested an important diversification in the political strategies used by indígena people in Cauca and created a division inside the indígena movement. These divisions were the origin of another very important indígena organization: the Asociación de Autoridades Indígenas del Suroccidente – AISO (Association of Indigenous Authorities from the South-West; for more see Findji, 1992; Bolaños et al., 2012).

As Brett Troyan (2015) has shown, the strengthening of ethnic identity above other forms of identification such as class was in part a direct response to state-sanctioned violence under the framework of the anticommunist fight and the persecution of popular organizations. It is no coincidence that these changes took place at the same time as the prosecution of the most important leaders of the CRIC under the accusation of having connections with communist guerrillas, particularly with the M-19. However, this is not the whole story. The Guambianos were also developing other ways of conceiving mobilization by creating new strategies and ideas about themselves. Thus, the new doctrine of Derecho Mayor emerged in contrast with the movement's prior defense and use of Law 89 of 1890. Where did this concept come from,

and how was it related to state law? Was it just a production created at that moment, or was it based on an "immemorial" tradition particularly relevant for the Misak people? And what was the relationship between the Derecho Mayor and Law 89?

The *Derecho Mayor* and Pursuit of Justice Through Law

The idea that there is a superior law to human law has a long tradition in Western legal thought and is the very basis of differentiation between so-called natural law and positive law. The idea of natural law was spread widely in the Americas throughout the colonial period and was key to defining which indígenas traditions were allowed and which ones had to be extirpated. The monarch's law and customary law were supposed to follow the principles of natural law, which were no other than the principles dictated by the Catholic faith. Even though these so-called natural law codes were supposed to maintain order, they could also serve to legitimize disobedience against the injustice of law. In fact, the principle that laws that contradicted natural law should not be obeyed was expressed repeatedly throughout the entire region, especially during the processes of claiming independence from the Spanish King and continuing through the nineteenth and twentieth centuries. However, the content and characteristics of this natural law varied depending on the actors naming its principles.

Visions of natural law similar to the Derecho Mayor of the 1980s can be found in some legal claims written by different indígena communities in Colombia at the beginning of the twentieth century. The first references I have been able to trace came from lawsuits initiated by indígena communities in Cauca, Tolima and Caldas as a response to Law 104 of 1919, which was designed to accelerate the division of the resguardos lands.

Some of these lawsuits shared legal arguments used in legal indígenas' claims across the century. One was that the new law violated indígena property rights. This argument defended the idea that indígena property, although collective, should be protected by the state on the same terms as private property. According to the plaintiffs, their property rights were based on the peaceful possession that communities had exercised over those territories since time immemorial. And even more relevant to my analysis of two cases here, these lawsuits argued that they were the "original inhabitants of America" in a very similar way as in the 1980s Guambiano Manifesto. That argument became progressively stronger during this time, and it continued to recur in writings by the well-known indígena leader Manuel Quintín Lame and his followers that spread across the entire region (Lemaitre, 2017).

Let's examine their reasoning in more detail. First, the indígena claimants promiscuously entangled temporalities to create their legal arguments, mixing references from the Pre-Hispanic, Hispanic and Republican periods to think about their future as citizens in the dawning twentieth century. They rooted their claims to property rights in their "immemorial possession" of the land that preexisted Spanish rule. At the same time, to use this premise they needed to refer to themselves as indios/indígenas to differentiate from those who "arrived later," using categories that did not exist during the pre-Hispanic time. Those cate-

gories marked a particular relationship with both colonial and republican legal orders, unifying different populations with different customs, languages, beliefs, and ways of living and experiencing the territory. Second, their argument implicitly recognized the legitimacy of both colonial and republican political regimes by demanding the recognition of the resguardos, a type of property created during the colonial times, which they framed as a tradition to be kept. With all this, they made a third move that constructed a completely new way to think about their future as modern citizens. Although some detractors criticized indígenas' petitions regarding the protection of collective lands as a way to "remain in the past," the litigants saw their claims as a way to declare the modernity of their forms of living, to express their way of being modern.[7]

The litigants in these cases argued against Law 104 not only as a violation of their property rights, but also as in itself "not fair nor legal." Their reasoning stemmed from a historical argument that the resguardo lands were an institution that legitimately persisted both during colonial and republican times, throughout repeated debates on indigenous property rights conducted by jurists since the end of the eighteenth century. What does this mean in terms of time, law, forms of identification, and mobilization? Let's examine these interconnections in more detail.

In the case of the indígenas of La Montaña and San Lorenzo (1920), the claimants emphasized indigeneity as a special type of association, specifically "associations of perfect natural law, like any other primitive constitution of a set of beings united by race, language, religion, etc." (p. 125). They argued that undermining this association violated not only their rights but also the rights of all Colombian citizens, and that by not recognizing their proper status the government was creating a precedent against all types of associations, including commercial or industrial associations. The claimants from San Lorenzo and La Montaña asserted that this type of association was grounded in a legal right that could be considered superior and independent of the state law, as underlined in their argument that their property was "sacred" and that its peaceful possession for so long constituted "a more perfect title than any of you [the state authorities] have on your particular properties and, just as your property has to be respected, ours should be respected equally" (p. 125).

This language is not that surprising given the type of source we are reading, a document specially written for a very particular audience – state authorities – and using the language that this audience understands – legal language (Lemaitre, 2009). However, the way the narrative is structured in the legal document is a key to understanding indígena organizational strategies and the type of political identity the grassroot organizations were defending. The legal language allowed indígena communities to construct a sense of collectivity that could not be constructed in everyday practice. The plaintiffs translated the life of the resguar-

[7] This way of conceiving time has been described by anthropologists as characteristic of Andean societies, and Misak people today represent time in the form of a spiral. In the spiral, the past is located at the front, and the future (which cannot be seen) is located at the back. In such a way the only way to move towards the future is to look into the past, a past in which different temporalities intermingle to make sense of the present and imagine the future.

dos and their wishes to live and to own the land into terms that the state would understand, by using the formalities and rituals of the legal world; however, they used the language of law not only to make this particular claim related to property, but also to configure specific ideas of justice and self-identification. Law, in this case, defined a way of self-being.

Despite the litigant claims and the progressive creation of a social movement based on the idea of indigeneity as linked to collective property rights, the legal changes dividing the resguardos did not stop, nor did the reluctance of the state officials to accept indígena arguments. Yet, some years later, this situation would strengthen another argument: that the state law was unjust by nature, and thus, against this injustice, rebellion was the only legitimate option (Lame, 1927). This idea was later revived by indigenous people who joined the Colombian Communist Party (1930) and who defended joint struggle with other popular sectors.

These two positions represented two opposing ways of conceiving law and justice. The first one defended the legitimacy of state laws and advocated the idea that access to justice would be possible only by knowing the laws of the republic and by appealing for benevolent interpretation of them by the authorities. The other saw in state laws and government authorities a representation of injustice. This second position would see rebellion as a legitimate action to achieve true justice. The first group defended the legal category of indígena (by actively using Law 89 of 1890) and argued that legal struggle was the proper way to find equality. The second looked for a struggle based on class, equated justice with emancipation, and proposed a different conception of indigeneity, which, while defending the class struggle, did not seek to eliminate the category or merge with those identified as campesinos.

Although this division in the 1930s foreshadows similar divisions during the 1980s, the discussion that opened up the Manifesto seems to step away from this dilemma. The Manifesto's authors raised the defense of the Derecho Mayor as a way to talk of the illegitimacy of the law of the state, but not to call for a rebellion; in fact, it was enunciated as a way to separate the movement from those sectors clamoring for revolutionary change. In this case, the defense of Derecho Mayor was also a catalyst to recover other things – language, beliefs, education, procreation – that were not contemplated in 1920 nor in 1930. In this regard, the Derecho Mayor was not only a claim for property rights nor a delegitimation of the state. It was a mixture of both strategies, with new elements. It was once again a new way to face the future by looking into the past; a past in which different temporalities intermixed in creative and inventive ways to propose a new form for understanding law, justice, and self-being.

Creating Indígena Law: A Path for Organizing

The position indigenous people took against the Indigenous Statute of Turbay's government in the 1980s was based not only on their reflections on past experiences in order to face their future, but also on complex dynamics that related global with local issues. Indígena leaders

posed questions regarding justice, property, citizenship, nationhood, and the nature of the republican order across the nineteenth and twentieth centuries pointing to the heart of the liberal law paradigm: How to create a more inclusive understanding of justice in the modern world? How to define the nature of property beyond individualized property? How to invoke the right to be different in the framework of equal citizenship rights? How to articulate nationhood from a place other than cultural homogeneity? How to build a modern government in which what is understood as "traditional" has a place?

The indígena leaders from Cauca had asked these questions since the origins of the republic, and of course their answers were not homogenous but attached to different forms of framing their self-being in each particular historical context. But, how can the significance of global-local dynamics in this process be understood? How many voices participated in creating the Derecho Mayor in the short and the long term? How did all this interaction develop as a part of indígena identity?

To answer these questions, I analyze the role that the concept of development played in so-called Third World countries during the context of the Cold War, paying attention to the diversity of actors that participated in agitated debates and public policy of the time. Governments, international organizations, academics linked in international networks, churches of different religious affiliations, and multinational companies, among other actors, all interacted simultaneously on widely varying scales in discussing economic development. In Latin America, one concern was how to "modernize" campesino and indígena populations, which often meant profoundly changing the immediate ways they experienced everyday life: their perceptions of time and physical space, their ways of inhabiting and relating to territory, their ways of coexisting and interacting with animals, the ways they fed themselves, worked, and even their sexual reproduction. All of these disparate actors located in intersecting and overlapping global networks gave very different answers to these very local concerns all linked to the one big question: How to be modern?

Twentieth-century laws nurtured by racialist discourses portrayed indígena people as a remnant of the past to be eliminated in order of being truly modern. In response, the so-called "indigenistas" (who conceived themselves as defenders of indígena people) proposed different ways to modernize the indígena world without exterminating it. This project involved actors, institutions, and a global network. The indigenista perspective gradually gained traction in the state, and by 1960 the Division of Indigenous Affairs of the Ministry of Government was created.[8] This institution sought to participate in the Andean Program of

[8] The first Congreso Indigenista Interamericano held in Patzcuaro, México in April 1940 focused precisely on creating an Institute that would bring together public policies related to indigenous peoples at both continental and national levels. For Colombia, the main recommendations related to land issues and the role of ethnological studies in helping solve the problems of indigenous communities from a "scientific" perspective. The Instituto Etnológico Nacional was founded in 1941 under the direction of the French ethnologist Paul Rivet, and in 1946 the Universidad del Cauca founded an institute for ethnology. Their first director was Gregorio Hernández de Alba, who would be in charge of the Division of Indigenous Affairs created in the 1960s (Troyan, 2007).

the International Labor Organization to improve the conditions of the indigenous people of Colombia, Ecuador, Bolivia, and Peru. Through systematic fieldwork, they looked to create solutions on subjects such as agriculture, education, and health without violating indígena customs, not always successfully.

Beyond indigenistas, two very important actors in debates on indigeneity and community development were the evangelical and Catholic churches, transnational entities with different pedagogical projects that both sought to lead the creation of new citizens for the modern world. These actors, with their diverse global networks, held both common and opposing interests. They all engaged with local debates, supported negotiations between different political actors, and participated in conversations regarding the current social order to ensure their relevance in the region and the success of their projects. At the same time, local actors related in very different ways with all these entities, engaged in a continuous exercise of negotiation and conflict where all the actors and their policies and projects were being constantly redefined.

Now, how were all these dynamics expressed in daily life? Did they shape ways of thinking about individual and collective struggles? If so, how did that happen? I address some of these questions through the lenses of some indígena people from the resguardo of Guambía who were individually facing these challenges during the early 1970s.

The history of Javier: Indigeneity, development, and exploitation

Javier[9] was interviewed in the early 1970s by Víctor Daniel Bonilla, a journalist and lawyer who was active with the indígena grassroots in Cauca. The recorded conversation started with a question about the traditional dress of the Guambianos and its relationship with social class differences. The information was mainly descriptive at first, but it quickly became a reflection on the concepts of property and "civilization."

Javier stated that "private property" was equivalent to the idea of "civilization." This connection made by Javier was not casual; it was a long-standing idea that had strengthened even at the legal level for a long time. In creating a framework for indigenous property ownership, Law 89 of 1890 explicitly connected the two concepts. The connection was at the heart of the question of what it meant to be considered indíena during those times. However, Javier's reflection took a more critical position toward the idea of "civilization."

According to him, the only way to survive as an indígena person was to reject the classification of "civilized" and instead to defend the legitimacy of communal property. His position was not based on a fear of change nor an essential link between indigeneity and the land, but on the lived experience of those who, in the past, had chosen to divide their lands. He told how those who were "once indigenous" and who had supported the division of resguardos elsewhere, with the idea that they could someday become large landowners, quickly

[9] His last name does not appear in the transcript.

ended up losing their lands. He also said that the main reason for the systematic loss of land was the fact that the only way to succeed in the so-called "civilized world" was by taking advantage of one's peers:

> Being civilized does not mean that we are going to progress, or because we have private property we will be rich, instead, the exploiters will dominate us more easily, because we apparently are equal but, in the knowledge we are not equal. (p. 3)

Javier's view of indigeneity and its plan of action was directly tied to exploitation. For him, the search for well-being could not happen simply by being "civilized" in the terms that the law demarcated, but rather by defending the community. Javier thought the state's goal of civilization would not be able to provide the desired security for the future of the indígena population, particularly for those who did not have the cultural, political, and economic capital to further their well-being beyond other ways of inhabiting and exploiting the land. But the problem was not just that. He also said that for him, it was "against his good conscience" to embrace that way of succeeding in the civilized world. For Javier, to be "civilized" was against indigeneity, not only in economic terms but also in moral ones.

Javier's position was not shared by all indígena people in the region. Yet, it allows us to visualize one of the many options indígenas had for positioning themselves in that time's debates based on a critical reflection on their lived experience. Javier's understanding of property, civilization, and ideas of the good were strongly attached to the way he saw himself both as an individual and collective actor. These ideas were moving and transforming through multiple forums and actors, who themselves were often connected to communication networks and alliances that transcended space and time. We cannot clearly establish how Javier came to position himself this way: Was his indigeneity nourished by the official *indigenismo*? Was the view he had towards civilization the product of oppositional resistance to the idea of development? Was his moral understanding of exploitation an anti-capitalist one or a Christian one or both?

We cannot know for sure the answer to all these questions, but what we can take away is that Javier's position was the product of a creative-reflective exercise that brought into dialogue different knowledges and ideas with his lived experience and expectations for the future. In this very private scale, time and place blurred, allowing a process that I describe as "becoming oneself in context" (Escobar, 2020).

Javier's reflection against civilization was armed not only by the arguments of academics, priests, local politicians from different political affiliations, and others. His words were based also on empathy and morality, and all these elements allowed him to define the type of indígena person he wanted to be, the type of citizenship he would defend, and the type of social struggle he would join. This exercise of becoming oneself in this context informed political decisions such as supporting certain candidates, participating in certain organizational processes, or engaging with other actors in particular projects. At the same time, processes of

becoming also resulted in "dividing the struggle" or creating different fronts, which created points of connection and disconnection. In other words, it was part of a process of collective communication between multiple actors submerged in very different power relationships.

The Case of Juan Gregorio Palechor and the Creation of New Ways of Organizing

For indígena people in Latin America, developmental strategies went hand in hand with U.S. anti-communist sentiments in the greater context of the Cold War. The intervention of the indígena leader Juan Gregorio Palechor (1973)[10] from the resguardo of Guachicono at the Third Regional Indigenous Meeting of Cauca in 1973 tells us more about this problem. In his intervention, Palechor reflected on the persecution of the indígena people in the context of reclaiming their lands. He made a call for action to "think about politics" but without getting involved with political parties.

Palechor argued against the Colombian political party system, saying it was founded on making promises that never came true nor benefited indígena people. He called the current rulers "opportunists and bad politicians" (Palechor, 1973, p. 36) and recounted the many times these leaders failed to address indígena interests. Palechor included not only the members of the traditional political parties like Conservador and Liberal but also the Communists, some of whom were probably attending the meeting, not because he distrusted party members but because of the harm that identification with them could bring to the indígena movement.

Palechor spoke about the way central authorities used the excuse of the communist menace to disqualify indígenas intent on organizing themselves politically. His words pointed out the unfairness of the rhetoric of the time that celebrated the idea of a submissive peasantry. However, he also emphasized that being defined as "subversive" while economically exploited was dangerous for the collectivity as well as unjust. For Palechor, the only possible strategy was to get organized on the margins of all political parties, including the Communist Party (Palechor, 1973, p. 36–46).

Although Palechor criticized those who were distributing communist propaganda at the meeting, at the end of his speech he stressed the need to make a structural change. This change, he said, should be made not only by indígena people but also the white, black, and mestizo peasantry. He recognized that there were class needs that should lead to a joint struggle among all peasants, an argument that indígena members of the Communist Party had made for decades, and he condemned the violent response of the state to indígena organization. His claims were clearly a call for other ways to express class struggle, using other words and seeking other meanings far from the referent of communism, as a way to be protected from the repression of the state.

Palechor's reflection had at its heart an idea of emancipation and the role that law and violence should play in achieving it. On the one hand, there was the option of continuing to

[10] Palechor was a well-known activist from the Macizo region.

defend law and institutionalism to produce social change; on the other hand, there was the possibility of organizing into armed movements seeking revolution as some had started to do through their participation in guerrilla groups. For Palechor, there were other options in the middle of the spectrum, even though he had no clear strategy (Palechor, 2014).

What became the Derecho Mayor in the 1980s contained at the center debates about how to pursue justice and emancipation. This concern was not exclusive to Guambianos and nor to the Constitutional change of the 1990s; the existence of an indígena principle of justice above state law was also asserted by other indigenous groups in the country.[11] Of course, all these notions had transformed according to the particular contexts of different indígena communities. In fact, the idea of Derecho Mayor has also changed over time for Misak people. For example, in 1998, almost twenty years after the Guambiano Assembly, an important Misak leader, Lorenzo Muelas, explained the concept in front of a completely new audience: an International Seminar organized by the organization Acción Ecológica (Ecological Action) in Quito, Ecuador. Although Muelas's description of the Derecho Mayor was still deeply tied to a critical analysis of the concepts of development, law and violence, the specificities of the language changed.

In his speech, Muelas pointed out that the Derecho Mayor was incompatible with a capitalist system and called for the world's scientists to recognize the true "sustainable development." This was no other than the sustainable development indigenous people had achieved in the jungle and mountains for "thousands of years" through their ways of owning and interacting with the land. The Derecho Mayor's transformation – once again – sought to reformulate the principles of liberal law, but now to evaluate the economic system that has been at its base: capitalism.

Nowadays, activists who invoke Derecho Mayor in the early twenty-first century are doing it as a call for decolonizing history, reformulating hegemonic national discourses in the country, and demanding real economic, social, political, and cultural inclusion. In the name of Derecho Mayor, monuments are falling and some of the most iconic points in urban landscapes are starting to change, facing the future by looking at the entangled threads of the past for renovation. In this restorative process, very different actors play a role, including, for example, local intellectuals who write their stories in other languages for foreign publics, and all their (my) readers submerged in (your) complex and extended networks that blur the local and the global.

[11] Ley de Origen (Original Law), Derecho Propio (Our Own Law), and more recently Derecho Particular (Particular Law).

Conclusions

The process of creating the concept of the Derecho Mayor highlights several elements regarding the relationship between law, movements, and social change. First, it provides empirical evidence for the relevance of rethinking the local-global dichotomy in contemporary historical studies by looking more closely at the pluralities inside indígena social movements. Although the history of the Derecho Mayor seems to be framed in a localized space and moment, its creation can only be understood by including the different actors who participated in producing the ideas of law, justice and order at its base, which are in permanent transformation. These actors include not only rulers and their different political, ideological, and moral positions, but also networks of intellectuals representing different views, varied religious groups, global political networks, and others, all of whom are immersed in complex communication processes with locals. It is amidst these multiple voices' interaction that indigeneity is constantly rethought and reformulated, both individually and collectively.

My outlook here was inspired by Melucci's (1989; see also Escobar, 1992; Starn, 1992 and Rossi, 2017) call to question the apparent unity of movements and to privilege the processes of creating such an idea of unity. My aim was precisely to visualize the process of creating a sense of collective identity across various arenas where people address conflicts of different natures. The large majority of these conflicts occur in daily life and are focused on solving specific problems, like how to secure daily well-being, how and when to have children, how to inherit the land, how to dress, in what language to speak and with whom, what rites to follow. But, how can we understand collective action by taking into account all these variables? How can we understand these constantly moving and changing features in organizations? And, more importantly, how can we translate this understanding into a better knowledge of collective action? My focus highlights the relevance of considering different times and scales to visualize the constant movement inside social movements.

This chapter also drew attention to the role of innovation in indigenous legal thinking. Although local policy unfolds in dialogue with global dynamics, the local is not completely subjected to the global; its actors do not peacefully wait to obey what comes "from above" nor do they irrationally resist. It is key to see here the creation of the movement, with all its internal tensions and divisions, as not the product of mere "emergency responses" to "external" events.[12] It grew out of creative exercises looking to solve specific problems in the present, making use of diverse resources from the past and the present and amid communication with other diverse sectors, all immersed in networks of different scope and nature.

During the 1980s the concept of Derecho Mayor was not supported by all members of the indígena movement, following the idea that their abstract characteristics would not be able to transform reality. Yet the constant transformation of this idea and the discussions regarding it allowed indígena movements to renovate themselves in plural and constant

[12] As Orin Starn (1992) points out in his study on the rural communities of Peru, the urban world does not have a monopoly on innovation.

ways. The base of the Colombian indigenous movement involves an embrace of being divided on some points of struggle while being able to work together on other fronts. It is precisely in this permanent reinterpretation, in this continuous movement, in these complex interactions between the micro and the macro, and between the past and present, that the indígena idea has been constituted across time and space.

References

Aslanian, S. D., Chaplin, J. E., McGrath, A., & Mann, K. (2013). AHR conversation how size matters: The question of scale in history. *The American Historical Review*, *118*(*5*), 1431–72.

Bolaños, G., Bonilla, V., Fula, J, et al. (Eds.) (2012). *Nuestra vida ha sido nuestra lucha: Resistencia y Memoria en el Cauca Indígena*. Centro Nacional de Memoria Histórica.

De Vries, J. (2019). Playing with scales: The global and the micro, the macro and the nano. *Past & Present*, *242*(14), 23–36.

Escobar, A. (1992). Culture, economics, and politics in Latin American social movements theory and research. In A. Escobar & S. E. Alvarez (Eds.), *The making of social movements in Latin America: Identity, strategy and democracy* (pp. 63–85). Westview Press.

Escobar, K. (2020). *Ciudadanía, justicia e indigeneidad: Una historia de las prácticas jurídicas indígenas en el Cauca y en el Tolima, 1880–1938*. Ph.D. Dissertation. Universidad de los Andes, Facultad de Derecho.

Eslava, L. (2018). The moving location of empire: Indirect rule, international law, and the Bantu educational Kinema experiment. *Leiden Journal of International Law*, *31*(3), 539–567.

Findji, M. (1992). From resistance to social movement: The Indigenous authorities movement in Colombia. In A. Escobar & S. E. Alvarez (Eds.), *The making of social movements in Latin America: Identity, strategy and democracy.* Westview Press.

Jackson, J. (2019). *Managing multiculturalism: Indigeneity and the struggle for rights in Colombia*. Stanford University Press.

Lemaitre, J. (2009). *El derecho como conjuro: Fetichismo legal, violencia y movimientos sociales.* Universidad de los Andes.

Lemaitre, J. (2017). Manuel Quintin Lame: Legal thought as minor jurisprudence. *Law Text Culture*, 21, 76–99.

Mayorga, F. (2017). *Datos para la historia de la propiedad territorial indígena en el suroccidente colombiano*. Instituto Colombiano de Antropología e Historia.

Melucci, A. (1989). *Nomads of the present: Social movements and individual needs in contemporary society.* Temple University Press.

Muelas Hurtado, L. (2000). El derecho mayor no prescribe. *Ecología Política, 19*, 99–104.

Palechor, J. (2014). *The story of my life*. Duke University Press.

Rossi, F. (2017). Más allá del clientelismo: El movimiento piquetero y el Estado en Argentina. In P. Almeida (Ed.), *Movimientos sociales en América Latina: Perspectivas, tendencias y casos*. Buenos Aires: CLACSO.

Sassen, S. (2008). Introduction. In S. Sassen (Ed.), *Territory, Authority, Rights* (pp. 1–24). Princeton University Press.

Starn, O. (1992). 'I dream of foxes and hawks': Reflections of peasant protest, new social movements, and the Rondas Campesinas of northern Peru. In A. Escobar & S. E. Alvarez (Eds.), *The making of social movements in Latin America: Identity, strategy and democracy* (pp. 89–111). Westview Press.

Troyan, B. (2007). Gregorio Hernández de Alba (1904–1973): The legitimization of indigenous ethnic politics in Colombia. *European Review of Latin American and Caribbean Studies, 82*, 89–106.

Troyan, B. (2015). *Cauca's indigenous movement in southwestern Colombia: Land, violence, and ethnic identity.* Lexington Books.

Valverde, M. (2009). Jurisdiction and scale: Legal 'technicalities' as resources for theory. *Social & Legal Studies*, *18*(2), 139–57.

List of Primary Sources

Intervention of Juan Gregorio Palechor at the Third Cauca Regional Indigenous Meeting – First popular meeting of Colombian Indigenous people (1973). Transcriptions. Fundación Colombia Nuestra Archive, pp. 36–40.

Lame, Quintín (1927). El Derecho de la raza indígena en Colombia ante todo. El misterio de la naturaleza educa al salvaje indígena en el desierto. Imprenta Girardot. Pamphlet.

Manifiesto Guambiano (1980). Fundación Colombia Nuestra Archive.

Memorial from the indígenas of San Lorenzo and La Montana to the Congress of the Republic (1920). Law 32 of 1920. Colombian General National Archive, Legislative Archive of the Congress, E06CBB03. Vol. 3, ff. 125.

Víctor Daniel Bonilla interviews transcripts (no date). Fundación Colombia Nuestra Archive, Interviews Transcripts, Guambía.